



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XC092**

#### **Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Atlantic Shores Offshore Wind Energy Projects Offshore of New Jersey**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application for Letters of Authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from Atlantic Shores Offshore Wind, LLC (Atlantic Shores) for authorization to take small numbers of marine mammals incidental to activities associated with two offshore wind energy projects in the Bureau of Ocean Energy Management's (BOEM) Lease Area Outer Continental Shelf (OCS)-A-0499 off of New Jersey over the course of 5 years beginning on January 1, 2025. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Atlantic Shores' request for the development and implementation of regulations governing the incidental taking of marine mammals and associated Letters of Authorization (LOAs). NMFS invites the public to provide information, suggestions, and comments on Atlantic Shores' application and request.

**DATES:** Comments and information must be received no later than *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West

Highway, Silver Spring, MD 20910 and electronic comments should be sent to

*ITP.Potlock@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

*<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of Atlantic Shores' application may be obtained online at: *<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>*. In case of problems accessing these documents, please call the contact listed above.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

### **Summary of Request**

On February 28, 2022, NMFS received an application from Atlantic Shores requesting authorization to take marine mammals incidental to construction activities associated with two offshore wind energy projects (referred to as Project 1 and Project 2 in the application) in the Lease Area OCS-A-0499 off of New Jersey. In response to our comments, and following extensive information exchanges with NMFS, Atlantic Shores submitted a revised application on August 12, 2022, that we determined was adequate and complete on August 25, 2022. The requested regulations would be valid for 5 years, from January 1, 2025 through December 31, 2029.

Atlantic Shores plans to conduct construction activities for Projects 1 and 2 that consist of the following: impact installation of wind turbine generator (WTG) and offshore substation (OSS) foundations (consisting of either monopile or jacket foundations); site characterization surveys; impact installation of a permanent meteorological (met) tower; deployment of metocean buoys; placement of scour protection; the installation of eight export cables via trenching, laying, and burial; and vibratory pile driving to temporarily install and remove sheet pile cofferdams at two cable landfall sites. Vessels will be used to transport crew, supplies, and materials to the project area and to support construction activities. Atlantic Shores may also conduct fisheries surveys during the effective period of the requested regulations, as required by BOEM. Atlantic Shores has indicated no unexploded ordinance/munitions and explosives of concern (UXO/MEC) detonations would occur during the effective period of the regulations and has not included this activity as part of the specified activities. A subset of the specified activities included in the application (*i.e.*, installing piles using impact and vibratory pile driving and site characterization surveys) may result in the incidental take, by Level A harassment and/or Level B harassment, of marine mammals. Therefore, Atlantic Shores requests authorization to incidentally take marine mammals.

### **Specified Activities**

In Executive Order 14008, President Biden stated that it is the policy of the United States to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.

Through a competitive leasing process under 30 CFR 585.211, Atlantic Shores was awarded Commercial Lease OCS-A 0499, located offshore of New Jersey in the New Jersey Wind Energy Area and has the exclusive rights to submit a construction and operations plan (COP) for activities within the lease area. Atlantic Shores has submitted a COP to BOEM proposing the construction, operation, maintenance, and conceptual decommissioning of Project 1 and Project 2, collectively generating 1,510 megawatts (MW) of clean energy. Combined, these projects will have a maximum of 200 WTGs, 10 OSSs, 1 meteorological tower, and 8 transmission cables making landfall at 2 locations in Atlantic and Monmouth Counties.

Atlantic Shores anticipates that activities potentially resulting in the take of marine mammals could occur during the life of the requested regulations and associated 5-year Letters of Authorization (LOAs). Specifically, these activities are:

- The installation, via impact pile driving, of up to 200 WTGs utilizing either monopile (up to 15-meter (m) in diameter) or jacket foundations (up to 5-m in diameter pin piles). Project 1 would be comprised of 105-111 foundations and Project 2 would be comprised of 89-95 foundations;
- The installation, via impact driving, of up to 10 OSSs using up to jacket foundations comprised of 5-m pin piles (with 5 OSSs allocated to each project);
- Construction-related high-resolution site assessment geophysical surveys utilizing acoustic sources with frequencies of <180 kilohertz (kHz) for up to 300 days (estimate of 60 days annually) during all 5 years;
- The installation, via impact driving, of one permanent met tower in Project 1 using either a monopile up to 15-m in diameter or a jacket foundation using up to 5-m pin piles; and

- The installation and removal, via vibratory driving, of up to eight temporary steel sheet pile cofferdams at the Atlantic cable landfall site (Project 1) and the Monmouth cable landfall site (Project 2).

### **Information Solicited**

Interested persons may submit information, suggestions, and comments concerning Atlantic Shores' request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Atlantic Shores, if appropriate.

Dated: September 23, 2022.

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Kimberly Damon-Randall,  
Director, Office of Protected Resources,  
National Marine Fisheries Service.

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